

REMARKS

This is in further response to the Office Action mailed on April 19, 2006.

Claims 1, 8 and 15 are amended, no claims are canceled or added; as a result, claims 1-27 remain pending in this application.

§103 Rejection of the Claims

Claims 1-6, 8-13, 15-20, and 22-26 were rejected under 35 USC § 103(a) as being unpatentable over Busick (U.S. 6,636,151) in view of Cash (U.S. 5,729,197). In order for the *prima facie* case of obviousness to exist, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the claims are not obvious because the claims contain elements not found in the combination of Busick and Cash.

For example, each of independent claims 1, 8, and 15 as amended, and claim 22 as previously presented recite that alert messages are sent to a proxy system via a second private network when a monitored system cannot send the alert through a first network interface to a first network. Also recited is that the proxy system then forwards the alert message to a management system via the first network on behalf of the monitored system. Applicant respectfully submits that the combination of Busick and Cash fails to teach or disclose the recited claim elements. Busick fails to teach or suggest the use of two networks in sending an alert to a management system. Further, Cash uses a second public network to send an alert when a management system is not reachable via a first public network. However, this is quite different from Applicant's claims 1, 8, 15 and 22. In Applicant's claims, a monitored system sends an alert message via a second network to a proxy system when it cannot send the message via a first

network. The proxy system receives the message on the second network, and sends it over the first network on behalf of the monitored system. This is different from Cash, which only sends the message on the second network if the first network is unusable. Thus in Cash, the management system must be available on both the first and second network for the system to operate. In Applicant's claimed invention, the management system need only be available on the first network. In view of the above, the combination of Busick and Cash fails to teach or suggest each and every element of Applicant's claim 1, 8, 15 and 22. Therefore the claims are not obvious in view of the combination of Busick and Cash.

Additionally, for purposes of any potential appeal, Applicant reasserts the argument made in the response filed August 31, 2006 that the use of a private network patentably distinguishes the claims over the combination of Busick and Cash. As previously argued, the commonly accepted definition of a private network is a network controlled by an end user organization. For example, Newton's Telecom Dictionary defines a private network as "a network built and owned by an end user organization" or alternatively as "a network comprising dedicated circuits leased from one or more public carriers." Similarly, the McGraw Hill Encyclopedia of Networking & Telecommunications defines a private network as lines that are "dedicated to the customer, and so are private." The telephone networks described in Cash are thus not private networks because neither the dialup network nor the cellular phone network described in Cash are dedicated to an end user. In fact, the dialup network described in Cash is commonly referred to as the PSTN or Public Switched Telephone Network (emphasis added). The network is public because the circuits are not dedicated to an end-user, rather they are available for any member of the public to use. The fact that a fee may be charged for the use of the public network (or cellular telephone network) is irrelevant to whether the network is considered a private network, rather it is whether the network is available at all to the public.

For at least the reasons discussed above, neither Busick nor Cash teach or suggest each and every limitation in Applicant's claims 1, 8, 15 and 22. As a result, the combination of Busick and Cash fails to teach or disclose each and every element of Applicant's claims 1, 8, 15, and 22. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1, 8, 15, and 22.

Claims 2-6, 9-13, 16-20, and 23-26 depend either directly or indirectly from claims 1, 8,

15 and 22 and are patentable over Busick and Cash for the reasons argued above, and are also patentable in view of the additional elements which they provide to the patentable combination. If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. MPEP § 2143.03.

Claims 7, 14, 21, and 27 were rejected under 35 USC § 103(a) as being unpatentable over Busick (U.S. 6,636,151) in view of Cash (U.S. 5,729,197) and further in view of Emerson et al. (U.S. 6,774,904). Claims 7, 14, 21 and 27 depend from claims 1, 8, 15 and 22 and therefore include the recitation of sending an alert message from a monitored system to a proxy system through a second private network when a first network is not usable by the monitored system, followed by forwarding the alert message by the proxy system over the first network on behalf of the monitored system. As discussed above, neither Cash nor Busick teach or suggest the recited language. Applicant has reviewed Emerson and can find no teaching or suggestion of the recited language, nor any teaching or suggestion of sending an alert message to a proxy system through a private network. As a result, the combination of Busick, Cash and Emerson fails to teach or disclose each and every element of claims 7, 14, 21 and 27. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 7, 14, 21 and 27.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 19th day of October 2006.

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